

DEPARTMENT OF LABOR & INDUSTRY  
BOARD OF PERSONNEL APPEALS  
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STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO: 11-2013

KARRY MARTYN et al,	)	Case No.: 682-2013
Complainants,	)	
	)	INVESTIGATIVE REPORT
vs	)	AND
	)	NOTICE OF INTENT TO DISMISS
DETENTION OFFICERS ASSOCIATION OF	)	
MISSOULA COUNTY, TOM BOILEAU,	)	
PRESIDENT	)	
Defendant		

**I. INTRODUCTION**

On October 31, 2012 , Karry Martyn and sixteen co-complainants (Marilyn C. Ruguleiski, Douglas A. Jackson, Nicole Lee-Rye, Shaun Stewart, Tonia Turner, Terra Tackett, Cameron Brewer, Tyler Terrill, Sheryl Stickney, Barbara Rodrick, Reese Richter, Chance Hidey, Clint Packard, Eric Lechleiter, Pate Gruber and Josh Edison) filed an unfair labor practice charge with this Board alleging that the Detention Officers of Missoula County, Tom Boileau, President was committing unfair labor practices as defined in Section 39-31-402 MCA of the Montana Collective Bargaining for Public Employees Act. The Complainants allege:

Mr. Boileau, as President of the DOAMC (Detention Officers of Missoula County), has failed to uphold the Constitution of the DOAMC or follow the By-Laws of the DOAMC. Mr. Boileau has used his position as president of the DOAMC to promote and pursue his own personal agenda against the Association employer, Missoula County. Mr. Boileau has repeatedly failed to bring important issues before the membership and has filed legal documents without the prior knowledge of the membership. Mr. Boileau has fostered an environment within the Association that tolerates and encourages threats and intimidation against Association members who question or disagree with his agenda, a violation of MCA 39-31-402.

1 Arlyn "Butch" Plowman was assigned by the Board to investigate the charge and  
2 has communicated with the parties in the course of the investigation. The  
3 investigator allowed the Complainants time and opportunity to submit additional  
4 argument and information to rebut the Defendant's November 14, 2012  
5 response.  
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## 10 II. BACKGROUND AND DISCUSSION 11 12 13

14 The Defendant, Detention Officers Association of Missoula County (DOAMC) or  
15 Association is the recognized exclusive representative for bargaining unit of  
16 unsworn civilian detention officers employed by Missoula County. The Defendant  
17 is an independent, unaffiliated labor organization.  
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21 There are several sections of the Montana Collective Bargaining for Public  
22 Employees Act that may provide guidance when considering the complaint at  
23 hand:  
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27 **39-31-101. Policy.** In order to promote public business by removing  
28 certain recognized sources of strife and unrest, it is the policy of the state  
29 of Montana to encourage the practice and procedure of collective  
30 bargaining to arrive at friendly adjustment of all disputes between public  
31 employers and their employees.<sup>1</sup>  
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33 **39-31-201. Public employees protected in right of self-organization.**  
34 Public employees shall have and shall be protected in the exercise of the  
35 right of self-organization, to form, join, or assist any labor organization, to  
36 bargain collectively through representatives of their own choosing on  
37 questions of wages, hours, fringe benefits, and other conditions of  
38 employment, and to engage in other concerted activities for the purpose of  
39 collective bargaining or other mutual aid or protection free from  
40 interference, restraint, or coercion.<sup>2</sup>  
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43 **39-31-205. Designated labor organizations to represent employees**  
44 **without discrimination.** Labor organizations designated in accordance  
45 with the provisions of this chapter are responsible for representing the  
46 interest of all employees in the exclusive bargaining unit without  
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49 <sup>1</sup> Section 39-31-101 contains language similar to that found in the last paragraph of Section 1 of the  
50 National Labor Relations Act.

<sup>2</sup> Section 39-31-201 is analogous to Section 7 of the National Labor Relations Act.

1 discrimination for the purposes of collective bargaining with respect to  
2 rates of pay, hours, fringe benefits, and other conditions of employment.<sup>3</sup>  
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4 **39-31-206. Labor organization to guarantee certain rights and**  
5 **safeguards prior to certification or recognition.** (1) Certification or  
6 recognition as an exclusive representative shall be extended or continued,  
7 as the case may be, only to a labor or employee organization the written  
8 bylaws of which provide for and guarantee the following rights and  
9 safeguards and whose practices conform to such rights and safeguards  
10 as:  
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12 (a) provisions are made for democratic organization and  
13 procedures;

14 (b) elections are conducted pursuant to adequate standards and  
15 safeguards;

16 (c) controls are provided for the regulation of officers and agents  
17 having fiduciary responsibility to the organization; and

18 (d) requirements exist for maintenance of sound accounting and  
19 fiscal controls, including annual audits.

20 (2) The board shall hear and decide all disputes arising under  
21 subsection (1).<sup>4</sup>  
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23 **39-31-306. Collective bargaining agreements.** (1) An agreement  
24 reached by the public employer and the exclusive representative must be  
25 reduced to writing and must be executed by both parties.  
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27 (2) Except as provided in subsection (5), an agreement may  
28 contain a grievance procedure culminating in final and binding arbitration  
29 of unresolved grievances and disputed interpretations of agreements.  
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31 (3) An agreement between the public employer and a labor  
32 organization must be valid and enforced under its terms when entered into  
33 in accordance with the provisions of this chapter and signed by the chief  
34 executive officer of the state or political subdivision or commissioner of  
35 higher education or by a representative. A publication of the agreement is  
36 not required to make it effective.  
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38 **39-31-402. Unfair labor practices of labor organization.** It is an unfair  
39 labor practice for a labor organization or its agents to:

40 (1) restrain or coerce:

41 (a) employees in the exercise of the right guaranteed in 39-31-201;

42 or

43 (b) a public employer in the selection of a representative for the  
44 purpose of collective bargaining or the adjustment of grievances;

45 (2) refuse to bargain collectively in good faith with a public  
46 employer if it has been designated as the exclusive representative of  
47 employees;  
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50 <sup>3</sup> Section 39-31-205 is analogous to Section 9 of the National Labor Relations Act.

<sup>4</sup> There is no similar provision in the National Labor Relations Act.

1 (3) use agency shop fees for contributions to political candidates or  
2 parties at state or local levels.<sup>5</sup>  
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4 The Montana Supreme Court has approved the practice of the Board of  
5 Personnel Appeals in using Federal Court and National Labor Relations Board  
6 (NLRB) precedent as guidelines in interpreting the Montana Collective  
7 Bargaining for Public Employees Act, *State ex rel. Board of Personnel Appeals*  
8 *vs. District Court*, 183 Montana 223 598 P.2d 1117, 103 LRRM 2297; *Teamsters*  
9 *Local No. 45 vs. State ex rel. Board of Personnel Appeals*, 185 Montana 272,  
10 635 P.2d 185, 119 LRRM 2682; and *AFSCME Local No. 2390 vs. City of Billings*,  
11 Montana 555 P.2d 507, 93 LRRM 2753. To the extent cited in this decision,  
12 federal precedent is considered for guidance and to supplement state law when  
13 applicable.  
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21 In 1980 the United States Eighth Circuit Court of Appeals provided a legal  
22 analysis of an exclusive representative's duty of fair representation with the  
23 following from *National Labor Relations Board v. American Postal Workers*  
24 *Union*, 618 F.2d 1249, 103 LRRM 3045:  
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29 Section 8(b) (1) (A) of the Act makes it an unfair labor practice for a union  
30 to "restrain or coerce" employees in the rights guaranteed in § 7 of the  
31 Act. 29 U.S.C. § 158(b) (1) (A). Section 7 of the Act protects the right of  
32 employees to engage in union or other concerted activities or to refrain  
33 from such activities. 29 U.S.C. § 157. The rights protected by § 7,  
34 however, are limited by the principle of exclusive representation set forth  
35 in § 9(a) of the Act. 29 U.S.C. § 159(a). See *Emporium Capwell Co. v.*  
36 *Western Addition Community Organization*, 420 U.S. 50, 61-70, 95 S.Ct.  
37 977, 984-88, 43 L.Ed.2d 12 (1975); *NLRB v. Tanner Motor Livery, Ltd.*,  
38 419 F.2d 216, 218-221 (9th Cir. 1969). In view of the restraints imposed  
39 on individual employee rights by the principle of exclusive representation,  
40 the Board and the courts have imposed upon unions a reciprocal  
41 obligation of the Act to fully and fairly represent all of the employees. *Vaca*  
42 *v. Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 909, 17 L.Ed.2d 842 (1967);  
43 *General Truck Drivers Local 315*, 217 N.L.R.B. 616, 619, 89 L.R.R.M.  
44 1049, 1053 (1975), enforced, 545 F.2d 1173 (9th Cir. 1976). A union  
45 which fails to live up to this obligation unjustifiably restrains employees in  
46 the exercise of their § 7 rights and thereby violates § 8(b) (1) (A). *Vaca v.*  
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50 <sup>5</sup> Section 39-31-402 contains language similar to that found in Section 8(b) of the National Labor Relations Act

1        *Sipes*, supra, 386 U.S. at 177-78, 181-83, 87 S.Ct. at 909-10, 912-13. The  
2        duty of fair representation gives employees a correlative right under § 7 to  
3        be represented without arbitrary, irrelevant or invidious discrimination by  
4        their exclusive representative. *Kling v. NLRB*, 503 F.2d 1044, 1046 (9th  
5        Cir. 1975). Arbitrary conduct alone may suffice to establish a violation of  
6        the duty of fair representation. *Griffin v. UAW*, 469 F.2d 181, 183 (4th Cir.  
7        1972); *Smith v. Hussman Refrigerator Co.*, 100 L.R.R.M. 2238, 2244-45  
8        (8th Cir. 1979), reh. en banc, 619 F.2d 1229 (8th Cir.1980). In evaluating  
9        whether union conduct is so arbitrary as to breach the duty of fair  
10       representation, so long as a union exercises its discretion in good faith  
11       and with honesty or purpose, a "wide range of reasonableness must be  
12       allowed." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338, 73 S.Ct. 681,  
13       686, 97 L.Ed. 1048 (1953). Mere negligence, poor judgment or ineptitude  
14       are insufficient to establish a breach of the duty of fair representation. *Id.*  
15       On the other hand, a union may not impair individual employee interests  
16       on the basis of personal preferences. Branch 6000, *National Ass'n of*  
17       *Letter Carriers v. NLRB*, 194 U.S.App.D.C. 1, 4-6, 595 F.2d 808, 811-13  
18       (D.C.Cir.1979); *Griffin v. UAW*, supra, 469 F.2d at 183.

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21       The Montana Supreme Court applied federal private sector labor law standards  
22       to an exclusive representative's duty of fair representation under the Montana  
23       Public Employee Collective Bargaining Act in *Teamsters Local No. 45, Affiliated*  
24       *With International Brotherhood Of Teamsters, Et Al. v. State Of Montana, Ex*  
25       *Rel., Board Of Personnel Appeals And Stuart McCarvel*, (ULP 24-77), 223 M 89,  
26       724 P2d 18, 43 St. Rep 1555 (1986):

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28       A union's duty of fair representation is a judicially created doctrine  
29       first recognized in the context of the Railway Labor Act in *Steele v.*  
30       *Louisville & Nashville Railroad Co.* (1944), 323 U.S. 192, 65 S.Ct.  
31       226, 89 L.Ed.173. *Steele* required the Union to represent its  
32       individual members "without hostile discrimination, fairly, impartially  
33       and in good faith." -*Id.* at 204, 65 S.Ct. at 232, 89 L.Ed. at 184. The  
34       *Steele* principle was later extended to bargaining representations  
35       under the National Labor Relations Act(NLRA) *Syres v. Oil*  
36       *Workers International Union, Local 23*(1955), 350 U.S. 892, 76  
37       S.Ct. 152, 100 L.Ed. 785. The NLRB first recognized a breach of  
38       the duty of fair representation as an unfair labor practice in *Miranda*  
39       *Fuel Co.* (1962), 140 NLR 181, 51 LRRM 1584, reasoning the  
40       privilege to act as an exclusive bargaining representative granted in  
41       § 9 of the NLRA necessarily gives rise to a corresponding § 7 right  
42       in union constituents to fair representation by the exclusive  
43       representative. Although the duty of fair representation arose in the  
44       context of racial discrimination, the doctrine has been expanded to  
45       include arbitrary conduct by a union toward bargaining unit

1 members. In *Vaca v. Sipes* (1967), 386 U.S. 171, 87 S.Ct. 903, 17  
2 L.Ed.2d 842, the United States Supreme Court stated the  
3 controlling test for breach of the union duty of fair representation: "A  
4 breach of the statutory duty of fair representation occurs only when  
5 a union's conduct . . . is arbitrary, discriminatory, or in bad faith." -  
6 Id. at 190, 87 S.Ct. at 916, 17 L.Ed.2d at 857.  
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10 The original (October 31, 2012) Unfair Labor Practice Charge and the  
11 Complainant's rebuttal to the Defendant's November 14, 2012 response  
12 identified, distinguished and described specific allegations in five paragraphs  
13 addressed below:  
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18 1. During a May 14, 2012 Detention Officers Association of Missoula County  
19 membership meeting the presiding officer failed to maintain order and  
20 decorum. Certain association members requested information relative to the  
21 election of officers and association finances. There were suggestions  
22 disagreements could be resolved in the parking lot. Moreover, the president  
23 permitted, possibly encouraged, perhaps even participated in a less than  
24 polite discussion as to whether disruptive members ought to be expelled (if  
25 not from the association, at least that meeting). If events transpired as  
26 alleged, the meeting was a discredit to the association.  
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34 Section 39-31-206 of the Montana Collective Bargaining Act for Public  
35 Employees requires the constitution and by-laws of a labor organization  
36 seeking recognition or certification as an exclusive representative contain  
37 certain democratic features, including but not limited to elections and fiscal  
38 accountability. The Board of Personnel Appeals has jurisdiction to ascertain  
39 whether a labor organization's constitution and by-laws provide the statutory  
40 protections. The Complainant and Defendant provided copies of the DOAMC  
41 constitution and by-laws (page 4 was missing from both submissions). The  
42 DOAMC Constitution and By-Law satisfy § 39-31-206. The Board of  
43 Personnel Appeals lacks authority and resources to monitor compliance with  
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1 the particular and peculiar provisions of every certified and/or recognized  
2 exclusive representative labor organization's constitution and by-laws.  
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6 It should be noted the DOAMC Constitution and By-Laws contain provisions  
7 whereby a member may propose disciplinary action against another member  
8 (Article II Section 4) or the removal of an elected officer (Article IV Section 3).  
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10 The record does not indicate the complainants did either. Bargaining unit  
11 members are typically required to exhaust internal and contractual remedies  
12 before seeking relief elsewhere. See *Bell v DaimlerChrysler Corporation*  
13 547F3d 796, 185 LRRM 2097, 7th CA 2008.  
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19 The duty of fair representation attaches to a labor organization (and its  
20 agents), in its role as the certified or recognized exclusive representative for  
21 bargaining unit employees in their relationship with the employer, *Air Line*  
22 *Pilots v O'Neill*, 499 US 65, 136 LRRM 2721 (1991). The allegations  
23 delineated in paragraph 1 pertain to internal association matters, specifically  
24 events during a general membership meeting. The paragraph 1 allegations  
25 are not related to the Defendant's role as exclusive representative for a  
26 specific bargaining unit *vis a vis* its employer, Missoula County. Inasmuch as  
27 the paragraph #1 allegations do not reference events or actions of DOAMC  
28 and its relationship with the Missoula County, they are without merit. The  
29 allegations in paragraph #1 are not related to DOAMC's collective bargaining  
30 agreement or relationship with the Missoula County Detention Center.  
31 Individual union members and/or officers had no duty of fair representation  
32 during the May 14, 2012 membership meeting. *Ralph Wells, Plaintiff-Appellee*  
33 *Appellant, v. Southern Airways, Inc., Air Line Pilots Association, International,*  
34 616 F.2d 107, 104 LRRM 2338, (5<sup>th</sup> CA 1980):  
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45 individual union members have no representational duties to other  
46 members of the bargaining unit. The duty of fair representation is  
47 incumbent upon the labor organization only,  
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- 1 2. Negotiations between DOAMC and Missoula County did not meet the  
2 Complainants' expectations. In the second paragraph of the Complaint's  
3 detailed explanation and in the December 17 Complainant's rebuttal to the  
4 Defendant's November 14, 2012 response, it is alleged the Defendant was  
5 not sufficiently engaged in the bargaining process and failed to keep DOAMC  
6 members informed.  
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12 Under National Labor Relations Board precedent the Board of Personnel  
13 Appeals' authority to examine, evaluate and pass judgment upon bargaining  
14 strategies, proposals and counter proposals is limited to that necessary to  
15 determine whether such are offered or pursued in an attempt to frustrate the  
16 purposes of the act [to encourage the practice and procedure of collective  
17 bargaining to arrive at friendly adjustment of all disputes between public  
18 employers and their employees (§39-31-1-01 MCA)]: *H.K. Porter v NLRB* 397  
19 US 99, 73 LRRM 2561 (1960); *Reichhold Chemicals*, 288 NLRB 69, 127  
20 LRRM 1265 (1988).  
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28 In contract negotiations and administration, the exclusive representative  
29 has extensive flexibility in the exercise of its discretion. See *Merritt v.*  
30 *International Association of Machinists Aerospace Workers*, 613 F.3d  
31 609 188 LRRM 2774:  
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36 Following *Huffman*, the Supreme Court in *O'Neill*, ...emphasized that  
37 "any substantive examination of a union's performance . . . must be  
38 highly deferential, recognizing the wide latitude that negotiators need  
39 for the effective performance of their bargaining responsibilities."  
40 *O'Neill*, 499 U.S. at 78, 111 S.Ct. 1127. The Court noted that  
41 Congress did not "intend judicial review of a union's performance to  
42 permit the court to substitute its own view of the proper bargain for  
43 that reached by the union." *Id.*  
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45 A breach of the duty of fair representation occurs only when a union's  
46 conduct toward a member of the collective bargaining unit is arbitrary,  
47 discriminatory, or in bad faith. *Vaca*, 386 U.S. at 190, 87 S.Ct. 903.  
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1 Under this tripartite standard, a court should look to each element when  
2 determining whether a union violated its duty. *O'Neill*, 499 U.S. at 77, 111  
3 S.Ct. 1127. Therefore, the three separate levels of inquiry are as follows:  
4 "(1) did the union act arbitrarily; (2) did the union act discriminatorily; or (3)  
5 did the union act in bad faith." *Griffin v. Air Line Pilots Ass'n, Int'l*, 32 F.3d  
6 1079, 1083 (7th Cir. 1994). In order to successfully defend against a  
7 motion for summary judgment on a duty of fair representation claim, the  
8 plaintiff must point the court to evidence in the record supporting at least  
9 one of these elements. Fed.R.Civ.P. 56(e).

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12 A union's actions breach the duty of fair representation under the "arbitrary  
13 prong" if the union's conduct can fairly be characterized as "so far outside  
14 a wide range of reasonableness" that it is "wholly irrational." See *O'Neill*,  
15 499 U.S. at 78, 111 S.Ct. 1127 (internal citation omitted). A union acts in  
16 "bad faith" when "it acts with an improper intent, purpose, or motive . . .  
17 encompass[ing] fraud, dishonesty, and other intentionally misleading  
18 conduct." *Spellacy v. Airline Pilots Ass'n-Int'l*, 156 F.3d 120, 126 (2d  
19 Cir.1998) (citing *Baxter v. United Paperworkers Int'l Union, Local*  
20 *7370*, 140 F.3d 745, 747 (8th Cir.1998)). Although it is difficult to provide a  
21 precise definition of "discriminatory" conduct that breaches the duty of fair  
22 representation, the Supreme Court in *Amalgamated Ass'n of Street,*  
23 *Electric Railway & Motor Coach Employees of America v. Lockridge*, 403  
24 U.S. 274, 301, 91 S.Ct. 1909, 29 L.Ed.2d 473 (1971), held that the duty  
25 "carries with it the need to adduce substantial evidence of discrimination  
26 that is intentional, severe, and unrelated to legitimate union objectives."  
27 See also *Vaca*, 386 U.S. at 177, 87 S.Ct. 903 (noting that the duty of fair  
28 representation developed in a series of cases alleging racial discrimination  
29 that was "irrelevant or invidious" and served no legitimate union  
30 objectives).

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33 DOAMC membership ratified acceptance of a September 18, 2012 proposal  
34 from Missoula County. Apparently, the Complainants were less than  
35 pleased. Neither the undersigned nor the Board of Personnel Appeals has  
36 the authority, responsibility or perspective to question whether that  
37 acceptance and ratification was the best possible option available. There is  
38 no probable merit to support an allegation the acceptance and ratification of  
39 the management offer was arbitrary, discriminatory or in bad faith.

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3. On March 28, 2012 DOAMC requested and received membership authorization to spend a maximum of \$25,000 to serve the "long term best interest of the Association." The authorization ballot and accompanying

1 notice contained specific reference to the Theil Law Office and the arenas of  
2 legal action, arbitration, etc. The notice and ballot mentioned activities such  
3 as promoting due process, protecting members' interests, administering and  
4 enforcing the collective bargaining agreement.  
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9 In the 3rd paragraph of the Complaint's more detailed explanation and in the  
10 December 17 Complainants' rebuttal to the Defendant's November 14, 2012  
11 response it is alleged the Defendant , without prior membership approval,  
12 filed civil suit against Missoula County using the Tipp and Buley Law Firm  
13 rather than the Theil Law Office.  
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18 The Montana Collective Bargaining Act for Public Employees states any  
19 contract between DOAMC and Missoula County must be valid and enforced  
20 under its terms [§39-31-3-6(3 )MCA]. DOAMC's collective bargaining  
21 agreement with Missoula County contains a grievance procedure culminating  
22 in final and binding arbitration (Article 27). The Montana Public Employee  
23 Collective Bargaining Act does not contain a provision similar to section 301  
24 of the National Labor Relations Act. While one may question the efficacy of  
25 pursuing contractual grievances in civil court rather than the negotiated  
26 grievance and arbitration process, mere negligence, poor judgment, or  
27 ineptitude is sufficient to establish a breach of the duty of fair representation:  
28 *Hansen v Qwest Communications*, 564 F3d 919, 186 LRRM 2431 (8<sup>th</sup> CA  
29 2009).  
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40 The substitution of Tipp and Buley Attorneys at Law for the Thiel Law Office  
41 and the subsequent August 15, 2012 Fourth Judicial District Complaint and  
42 Demand for Jury Trial are internal union matters. As previously noted in the  
43 discussion of the 1<sup>st</sup> paragraph's allegations the Board of Personnel Appeals  
44 jurisdiction over internal union matters is severely limited. The analysis of the  
45 2<sup>nd</sup> paragraph's allegations leads to the conclusion the exclusive  
46 representative must have flexibility when dealing with an employer.  
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3 The 3<sup>rd</sup> paragraph allegations, taken at face value will not support a finding  
4 DOAMC acted discriminatorily, arbitrarily or in bad faith. Accordingly, the  
5 paragraph 3 allegations lack probable merit.  
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10 4. The Defendant has refused Sheryl Stickney association membership. That  
11 refusal is based upon DOAMC's belief Ms. Stickney is not properly a member  
12 of the bargaining unit. The Defendant presumes Ms. Stickney is not eligible  
13 for membership, because she was placed in a bargaining unit position  
14 contrary to DOAMC's collective bargaining agreement. The Board of  
15 Personnel Appeals has limited authority to interpret collective bargaining  
16 agreements. See *Litton Financial Printing Division v NLRB*, 501 US 190, 137  
17 LRRM 2441 (1991); *NLRB v C & C Plywood Corporation*, 385 US 421, 64  
18 LRRM 2065 (1967).  
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25 Whether Ms. Stickney was properly assigned to a bargaining unit position is a  
26 contract interpretation question suitable for resolution through DOAMC's  
27 Collective Bargaining Agreement's grievance and arbitration procedure. The  
28 dispute arising from Ms. Stickney's alleged wrongful assignment to a  
29 bargaining unit position is the subject of a civil suit DOAMC has filed against  
30 Missoula County (subject of paragraph 3 allegations above).  
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37 Article II of the DOAMC By-Laws appears inconsistent with Article IV of the  
38 DOAMC Constitution. Membership in the bargaining unit does not translate  
39 into membership in the exclusive representative labor organization. Ms.  
40 Stickney's DOAMC membership status does not affect her employment with  
41 Missoula County. Accordingly, the Board of Personnel Appeals lacks  
42 appropriate jurisdiction to determine Ms. Stickney's association membership  
43 status; *Service Employees Local 254 (Brandeis University)*, 332 NLRB 1118,  
44 165 LRRM 1321, October 31, 2000; ULP 62-89 *James Myrick, Et Al v*  
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1 *American Federation of State, County and Municipal Employees, Final Order*  
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3 January 25, 1991.  
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6 The question of Ms. Stickney's association membership is an internal union  
7 matter subject to internal union processes and appeals. Paragraph four's  
8 allegations concerning Ms. Stickney's association membership do not  
9 evidence discrimination, arbitrariness or bad faith sufficient to support a  
10 finding of probable merit.  
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16 5. The final portion of the complaint deals with access to DOAMC records.  
17 Article 6 of DOAMC's By-Laws stipulate association books and records are  
18 subject to inspection by any member at any reasonable time. Such books  
19 and records are to be maintained in the principle office without defining what  
20 or where that office is. It is presumed the officers charged with the care and  
21 maintenance of DOAMC books and records take appropriate and necessary  
22 care to insure their safety and preservation. Accordingly, it seems reasonable  
23 to impose reasonable safety and security conditions relative to the review and  
24 inspection of association files. The Complainants allege DOAMC officers and  
25 agents have placed unreasonable impediments in the way of those members  
26 wishing to inspect association records and books. The Defendant asserts  
27 association files are available for inspection at any mutually agreeable time  
28 and place. If the Defendant's assertions are valid, the conditions of the  
29 DOAMC Constitution and By-Laws have been satisfied. If the Defendant's  
30 assertions are less than reliable, internal union processes ought to be  
31 implemented to insure compliance with the association's controlling  
32 documents and good business practices. The Complainant's October 9,  
33 2012 request for copies of two years' of meeting notices, election notices,  
34 meeting minutes, ballots, financial records, audits, memos, all mail and  
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1 correspondence, etc. goes beyond what is required by DOAMC Constitution  
2 and By-Laws and appears burdensome.<sup>6</sup>  
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6 No doubt the Board has little interest and limited authority to become involved  
7 in internal union disputes (see discussion of paragraph # 1 above). The  
8 allegations in paragraph #5 are not related to DOAMC's collective bargaining  
9 agreement or its relationship with the Missoula County Detention Center. The  
10 allegations delineated in the complaint's fifth paragraph are not based upon  
11 events or actions of DAOMC as the bargaining unit's exclusive representative  
12 and its relationship with the Missoula County. Accordingly, they are without  
13 merit.  
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20 **III. DETERMINATION**  
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22 Based on the foregoing, the record does not support a finding of probable merit  
23 to the charge and this matter must be dismissed.  
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28  
29 Dated this 14<sup>th</sup> day of January 2013.  
30

31 BOARD OF PERSONNEL APPEALS  
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36 Arlyn L. Plowman, Investigator  
37

38 ARM 24.26.680B(6) provides: As provided for in 39-31-405(4), MCA, if a finding  
39 of no probable merit is made, the parties have ten (10) days to accept or reject the  
40 Notice of Intent to Dismiss. Written notice of acceptance or rejection is to be sent to the  
41 attention of the Investigator at PO Box 201503, Helena MT 59620-1503. The Dismissal  
42 becomes the final order of the board unless either party requests a review of the  
43 decision to dismiss the complaint.  
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46 \* \* \* \* \*

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48 <sup>6</sup> It goes without saying an exclusive representative has an obligation to provide agency fee payers  
49 certain information, *Teamsters Local 579 (Chambers and Owens, Inc)*, 350 NLRB 1166, 182 LRRM 1297  
50 (2007). However, there is no prescribed format for the delivery of the required data.

**CERTIFICATE OF MAILING**

I Windy Knutson do hereby certify that a true and correct copy of this document was mailed to the following on the 14<sup>th</sup> day of January 2013:

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